

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**LYNN R. HINSDALE**  
Claimant

VS.

**CITY OF HUTCHINSON**  
Self-Insured Respondent

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Docket No. 1,030,546

**ORDER**

The self-insured respondent requests review of the November 2, 2006 preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore.

**ISSUES**

The Administrative Law Judge (ALJ) found the claimant had sustained his burden of proof that his accidental injury arose out of and in the course of employment with the respondent and ordered the respondent to provide a list of three qualified physicians from which the claimant may designate an authorized treating physician.

The respondent requests review of whether the claimant sustained an accidental injury arising out of and in the course of employment with the respondent.

Claimant argues the ALJ's Order should be affirmed.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

Lynn Hinsdale is employed in the utility department for the respondent. His job duties include reading water meters, collecting unpaid water bills, changing out old water meters, and turning the water on and off. On August 18, 2005, he was using a pipe wrench to disconnect an old meter when he felt a pop in his mid back. The claimant mentioned to his co-workers, Dave Williams and Bernie Koch, that he had hurt his back. He did not tell his supervisors at that time.

On August 23, 2005, the claimant sought medical treatment with Dr. Daniel Hurst but did not specifically state he had injured his back at work, instead he simply said his back had been hurting since August 18, 2005. Claimant testified that he told the doctor that he was not sure if he had hurt his back at work or not. The doctor apparently suspected a bulging disk. The following day, August 24, 2005, the claimant reported the injury to his supervisors.

Claimant testified:

Q. So how is it then the next day then you reported to work it was the incident with the wrench?

A. Just because that was the only thing that I recalled happening to my back. I just thought it had something to do with a muscle and muscle pull. I thought it was going to get better in time or something and I didn't think it was that serious. That's why I went to Dr. Hurst.

Q. Assuming, doing construction work, you have aches and pains from time to time?

A. Yes.

Q. And did you assume the wrench incident was just going to be one of those?

A. Yes.<sup>1</sup>

The respondent referred the claimant to Dr. Verlin Janzen at the Hutchinson Clinic. The claimant was returned to light-duty work. On September 12, 2005, the claimant was still having problems so Dr. Janzen recommended physical therapy. The claimant was released to full duty on October 25, 2005. Respondent then advised the claimant that his claim was not compensable.

The ALJ was perplexed why claimant could have a specific traumatic event which he told his co-workers about and yet not mention it to the chiropractor. Nonetheless, the ALJ concluded there was otherwise consistency between claimant's complaints and the medical records. Accordingly, the ALJ found the claimant met his burden of proof that he suffered an accidental injury arising out of and in the course of his employment. This Board member agrees and affirms.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>2</sup> Moreover, this

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<sup>1</sup> P.H. Trans. at 34-35.

<sup>2</sup> K.S.A. 44-534a.

review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2005 Supp. 44-551(b)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.<sup>3</sup>

**WHEREFORE**, it is the finding of this Board Member that the Order of Administrative Law Judge Bruce E. Moore dated November 2, 2006, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of January 2007.

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BOARD MEMBER

c: James S. Oswalt, Attorney for Claimant  
Scott J. Mann, Attorney for Respondent  
Bruce E. Moore, Administrative Law Judge

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<sup>3</sup> K.S.A. 2005 Supp. 44-555c(k).